Public Prosecutor v Mohamed Nor

HIGH COURT (SEREMBAN) – CRIMINAL APPEAL NO 51-50 OF 1986
MUSTAPHA HUSSAIN J
20 AUGUST 1987

Criminal Law – Criminal intimidation – Overdue hire purchase instalments – Repossessors entering respondent's house – Respondent unsheathing sword – Prima facie case – Self-defence – Reasonable doubt raised in prosecution's case – Use of reasonable force to oust repossessors – Hire Purchase Act 1967, s 16(1) – Penal Code (FMS Cap 45), s 506

The respondent was charged with criminal intimidation by threatening the complainant with injury to his person with intent to cause alarm to the complainant, an offence punishable under s 506 of the Penal Code (FMS Cap 45). The respondent had purchased a car on a hire purchase loan from a finance company ('KUBB') and had defaulted in making 11 monthly instalment payments amounting to $6,508.78. Notice under s 16(1) of the Hire Purchase Act had not been served on the respondent. The administrative officer (finance) (PW3) of KUBB admitted that it had contravened s 16(1) of the Hire Purchase Act and that the repossessors had no right to go to the respondent's house. When the three repossessors reached the respondent's house, he invited them in. Later, he asked them to leave the house. The complainant said that before he and his two companions were asked to leave, the respondent uttered certain words in Malay meaning 'if you do not leave my house there will be blood flowing'. The complainant added that the respondent had a samurai sword in his right hand and a spear in his left hand. The three repossessors then went straight to the police station where a report (P4) was made.

The magistrate called for the defence. The crux of the defence was that the respondent had told the complainant to leave the house and the matter could be settled in court. The respondent said he unsheathed the sword in self-defence and he had no intention to use it to cause injury to any one. The learned magistrate found that the respondent had raised a reasonable doubt and acquitted and discharged him. The Public Prosecutor appealed against the acquittal order.

Held, dismissing the appeal: (1) The respondent's pondok is a castle to him and he has the right to ask the complainant and his two friends to leave and he can use reasonable force to oust the complainant and his two friends.

(2) The appeal has no merits at all. The learned magistrate had found that the evidence of the prosecution witnesses could not be reliable. He had found that the respondent had given evidence in a straightforward manner and had found it to be believable and that the respondent's defence had raised a reasonable doubt in the prosecution case.

Legislation referred to
Hire Purchase Act 1967 s 16(1)
Penal Code (FMS Cap 45) s 506

Mohd Zaki bin Md Yasin (Deputy Public Prosecutor) for the appellant.
Christopher Fernando for the respondent.

Cur Adv Vult

Mustapha Hussain J: This is an appeal by the Public Prosecutor against the acquittal and discharge of the respondent at the end of the case. The charge against the respondent reads as follows:

> That you on 7 June 1985 at about 11.00 am at Bukit Temusu, Kuala Pilah, in the District of Kuala Pilah, in the State of Negeri Sembilan, committed criminal intimidation by threatening one Redzuan bin Lazim with injury to his person with intent to cause alarm to the said Redzuan bin Lazim and that you have thereby committed an offence punishable under s 506 of the Penal Code.

Note: This is the court's translation of the charge which in Bahasa reads:

> Bahawa kamu pada 7 June 1985 jam lebih kurang 11.00 pagi, di Bukit Temusu, Kuala Pilah, didalam Daerah Kuala Pilah, di Negeri Sembilan, telah melakukan ugutan jenayah dengan menakutkan Redzuan bin Lazim dengan tujuan hendak mendatangkan cedera kapada nya dengan niat hendak menyebabkan kegentaran kepada Redzuan bin Lazim olih yang demikian kamu telah melakukan suatu kesalahan dan bolih dihukum dibawah Seksyen 506 Kanun Keseksaan.

The facts of the case

The respondent had purchased a car on a hire purchase loan from a finance company known as Kewangan Usaha Bersatu Berhad ('KUBB') and had defaulted in making 11 monthly instalment payments amounting to $6,508.78. KUBB earlier had tried to repossess the car but was not successful. Due to the change of the address of the respondent, the statutory notice under s 16(1) of the Hire Purchase Act could not be served on the respondent.

On 7 June 1985, the finance company KUBB sent its repossessors to the respondent's house which, in the words of the administrative officer (finance) (PW3) of the finance company, 'contravened s 16(1) of the Hire Purchase Act' and who also said 'the repossessors have no right to go to the accused's house'. This was clearly admitted in the evidence for the prosecution itself.

However, when the three repossessors reached the respondent's house at 11 am on 7 June 1985, with an authority to repossess (P1) issued by KUBB (which is not valid as admitted by KUBB's own officer PW3) they were invited by the respondent into his house. The arrears of payments were discussed and then the discussion broke off as the respondent (according to the complainant PW1) refused to pay the arrears. According to the complainant (PW1), the respondent asked the complainant and his two companions to leave the house, but before asking them to leave, the respondent had gone inside and taken out a samurai sword and uttered the words 'Jika awak tidak keluar daripada rumah saya akan ada tumpah darah', meaning 'if you do not leave my house there will be blood flowing'. The complainant (PW1) added further that the respondent had the samurai sword in his right hand and a spear ('lembing') in his left hand. The complainant and his two companions then

left and went straight to the police station, where a report was made (P4).

Under cross-examination, the complainant PW1 (strangely three of them were subjected to this alleged intimidation and yet only one, ie PW1, was named in the charge as being criminally intimidated) agreed that the respondent did not say that he will kill but only said if *'you do not go there will be* bloodshed' (in Bahasa in the notes of evidence 'OKT tidak pernah kata ia akan bunuh saya ia cuma kata jika 'kau tidak pergi akan berlaku tumpah darah').

The defence of the respondent was called and the respondent in his defence said that he invited the complainant and his two friends into his house. After the discussion about his arrears of payments on the hire purchase of the car, he had asked to be shown a court order but the complainant replied it was not necessary. The respondent said he was pushed on the chest by the complainant and his other two friends were also in the position to assault him ready with clenched fists. Earlier on, 11 persons had gone to his house with sticks and sword.

At this point of time, the respondent told the complainant and his two friends to leave the house and the matter can be settled in court. The respondent had again asked the complainant and his two friends to leave his house and on their refusal, the respondent took a sword and told them to leave his house. The sword was unsheathed. The respondent said it was only in his self-defence and he had no intention to use it to cause injury to anyone. The respondent's wife had come out and was frightened and ran inside the kitchen. The respondent's wife gave evidence saying though she did not see what was happening, she heard the complainant's and one of his two friends' voices which were aggressive. She heard them saying that if the car was not surrendered, they will beat up (Mereka kata 'kalau tak beri kereta dia pukul').

The learned magistrate after considering all the evidence found that the respondent had raised a reasonable doubt in the prosecution's evidence. The learned magistrate had found also that what the respondent had done was in self-defence and in defence of his property. The learned magistrate had also found that there was no intimidation and there was no intention of the respondent causing any injury to the complainant and his two friends. The learned magistrate therefore acquitted and discharged the respondent.

At the appeal, the learned deputy public prosecutor forwarded three grounds:

(1) The learned magistrate erred in law and in fact in holding that the prosecution had failed to establish a prima facie case in the light of the evidence adduced.

(2) The learned magistrate failed to make the necessary inference as to the intention of the respondent from his conduct and the surrounding circumstances of this case.

(3) The decision of the learned magistrate was against the weight of the evidence adduced.

Even at the outset of the appeal the three grounds of the learned deputy public prosecutor could not stand at all. On the first ground, the defence was called and the question of whether a prima facie case was being established or not does not arise at all.

On the threat of the respondent saying 'jika awak dent and the surrounding circumstances, it is very clear from the prosecution evidence that the complainant and his two friends had not proved at all that they had the right in law to go to the respondent's house to repossess the car. If at all the respondent had threatened the complainant, it was within his right to do so. The respondent's house may not be a castle, but his pondok is a castle to him and he has the right to ask the complainant and his two friends to leave and he can use reasonable force to oust the complainant and his two friends.

Though the complainant and his two friends were invited into his house by the respondent, their status as invitees ended when the respondent told them to leave the house. And if they refused to leave, then they become trespassers and from that moment onwards, the respondent's right to use reasonable force comes into play.

On the threat of the respondent saying 'jika awak tidak keluar daripada rumah saya akan ada tumpah darah', it is quite clear that this is a threat which is far beyond the meaning of reasonable force, but then it is hedged with a qualification, ie 'jika awak tidak keluar daripada rumah saya'. It is only if the complainant and his two friends refuse to leave the respondent's house that bloodshed will follow. It cannot be said that the threat had caused any alarm of injury to the complainant unless the complainant adamantly refuses to leave the respondent's house and only then, it can be said there is this element of alarm.

The complainant and his two friends, who were well-built persons, had no right to be there in the first place. Coupled with this, the respondent has all the right in this world to force them to get out. And strangely, the charge did not mention the precise place where the intimidation took place. To do so would probably embarrass the prosecution because straightaway one could see the intimidation took place in the respondent's own house. Why were the complainant's two well-built companions not alarmed at all? Or is it because the finance companies do engage rough characters and mean-looking people to repossess vehicles the owners of which are in default of payments?

The appeal has no merits at all. The learned magistrate's decision was correct. He had seen the witnesses giving evidence, and had found that the evidence given by the witnesses for the prosecution could not be reliable. He had found that the respondent had given evidence in a straightforward manner and had found as a fact to be believable and that the respondent's defence had raised a reasonable doubt in the prosecution's case, with which I concur.

The appeal is dismissed and the decision of the learned magistrate is affirmed.

Appeal dismissed.

Solicitors: *Gunaretnam & Co.*

Reported by *Gabriel Sebastian*

Ellamah d/o Ellapen v Renganathan s/o Komarasamy & Ors

HIGH COURT (KUALA LUMPUR) – CIVIL SUIT NO F487 OF 1985
SITI NORMA YAAKOB J
11 DECEMBER 1987

Land Law – Transfer of land – Plea of fraud – Plea of non est factum

Prior to 2 May 1984, the plaintiff was the registered proprietress of a certain piece of land but after that date, the defendants became the registered owners. It was this transfer which the plaintiff now disputed. The plaintiff alleged that she did not consent to it and that it was null and void. She also sought to impeach the transfer on the ground that it was a fraudulent transfer.

Held: (1) There was overwhelming evidence that there was fraud in the transfer of the land.

(2) The transfer was declared null and void.

Case referred to
1 *Saminathan* v *Pappa* [1981] 1 MLJ 121 (refd)

Legislation referred to
National Land Code 1965 ss 325-328, 340

Mathew Thomas (*Vadiveloo s/o Anumathau* with him) for the plaintiff.
Davidason Gopal for the defendants.

Cur Adv Vult

Siti Norma Yaakob J: The parties to this suit belong to one family and their dispute is over the ownership of a piece of land measuring five acres in area, where they all live in four houses that have been erected on it.

Prior to 2 May 1984, the plaintiff was the registered proprietress of the land but after that date, her three sons, the defendants, became its registered owners. It is this transfer that the plaintiff now alleges as being null and void as she had never consented to it in the first place and that her thumb-print appearing on the transfer form was obtained fraudulently. To that end, she also relies on the plea of non est factum and in this she claims the re-transfer of the land into her name.

The plaintiff has nine children, six daughters and three sons who are the defendants. From AB2, a letter dated 20 June 1975 written by her six daughters, it is very clear that the dispute over the land had been long outstanding between the female and male members of the family. The letter addressed to the Datok Penghulu, Jeram, and copied to the Ketua Kampong Sungai Buloh and the Member of Parliament of the area, sought the assistance of the Datok Penghulu to settle the dispute but nothing appears to have come out of it.

It is not disputed that in March 1984, a meeting was held at the home of the first defendant attended by all the members of the family and their respective spouses but different versions were given as to the purpose of the meeting.

The plaintiff testified that she had summoned the meeting so as to resolve the question of distributing the property between her children and in this respect her evidence is supported by her grandson, PW4, who testified that on the instructions of his grandmother, he had summoned all his uncles and aunts to the meeting. The defendants, however, maintain that the meeting never discussed the distribution of the property and that the only matter discussed was the settlement of a quarrel over the assault of PW4 by his uncle, the first defendant. If that was so, no reason was given by the first defendant as to the cause of the assault and the third defendant even testified that he was not even aware that such a meeting had taken place.

The only independent witness to this meeting, PW3, who had been specially summoned from Shah Alam, however, testified that 20 people attended the meeting and before it commenced he had ascertained the purpose of the meeting from the plaintiff which was to discuss the division of the property between her sons and daughters.

Bearing in mind the number of people attending the meeting and the ill feelings between the children of the plaintiff, I have no doubt that the plaintiff had called the meeting specially to discuss the distribution of the property. It seems highly inconceivable that such a large number of people should meet specially to settle a quarrel over an assault for which no reason or circumstances were given as to why or how it had taken place. The meeting must have been to discuss something more urgent or pressing and this could only be the distribution of the land over which so much ill feelings had surfaced